STATE OF MICHIGAN

COURT OF APPEALS

GEORGE F. PRANIS, Individually and as Next Friend of GEORGE ANTHONY PRANIS and CHRISTOPHER EVANGELOS PRANIS, Minors,

Plaintiffs-Appellants,

v

ISMAIL SENDI, M.D., NEW OAKLAND CHILD-ADOLESCENT AND FAMILY CENTER, and DEBRA GORNEY JANKOWSKI, MSN, RNCS,

Defendants-Appellees.

UNPUBLISHED
October 29, 2002

Nos. 227459; 228311
Oakland Circuit Court
LC No. 98-007466-NO

Before: Whitbeck, C.J., and O'Connell and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's orders granting defendants' motions for summary disposition and awarding defendants sanctions under MCR 2.403(O). We affirm.

While divorce proceedings involving plaintiff and his ex-wife were pending, plaintiff's ex-wife brought the parties' two children to counseling with defendants Sendi and Gorney-Jankowski at the New Oakland Child-Adolescent and Family Center. During one of the counseling sessions, one of the children made a statement regarding sexual abuse by plaintiff towards the other child. Gorney-Jankowski thereafter reported her suspicions of child abuse to authorities. Plaintiff subsequently filed this lawsuit against defendants, alleging claims labeled as follows: (1) "immunity," (2) "parental alienation syndrome a.k.a. intentional infliction of emotional distress," (3) "ordinary or 'common law' negligence," (4) "gross negligence," and (5) "professional malpractice – licensed health care professional." Defendants moved for summary disposition, and the trial court granted the motions. The court also granted defendants' motions for sanctions under MCR 2.403(O).

Plaintiff now argues that the trial court erred in granting defendants summary disposition. We disagree.

This Court reviews de novo a trial court's ruling with regard to a summary disposition motion. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). Defendants brought their summary disposition motions under MCR 2.116(C)(7), (8), and (10).

Summary disposition may be granted under MCR 2.116(C)(7) if a claim is barred because of immunity granted by law. In reviewing a motion brought under MCR 2.116(C)(7), this Court considers all the documentary evidence and accepts the plaintiff's well-pleaded allegations as true, unless they are contradicted by documentary evidence. *Sewell, supra* at 674; see also *Patterson v Kleiman,* 447 Mich 429, 433-435; 526 NW2d 879 (1994).

Motions brought under MCR 2.116(C)(8) test the legal sufficiency of a claim with regard to the pleadings alone. *Madejski v Kotmar Ltd*, 246 Mich App 441, 443-444; 633 NW2d 429 (2001). "All well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Id*. at 444. "Summary disposition under MCR 2.116(C)(8) is proper 'when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery.'" *Corley v Detroit Bd of Ed*, 246 Mich App 15, 18; 632 NW2d 147 (2001), quoting *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The moving party must initially support its position by affidavits, depositions, admissions, or other documentary evidence. *Id.* at 455. "'The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.'" *Id*., quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the nonmoving party would bear the burden of proof at trial, that party may not merely rely on the allegations or denials in the pleadings but must set forth specific facts demonstrating the existence of a genuine issue of material fact. *Smith v Globe Life Ins Co, supra* at 455. The trial court must view the affidavits and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* at 454. If the opposing party fails to establish the existence of a material factual dispute, summary disposition is appropriate. *Id.* at 455.

Moreover,

> Under MCR 2.116, it is no longer sufficient for plaintiffs to *promise to offer* factual support for their claims at trial. As stated, a party faced with a motion for summary disposition brought under MCR 2.116(C)(10) is, in responding to the motion, required to present evidentiary proofs creating a genuine issue of material fact for trial. Otherwise, summary disposition is properly granted. MCR 2.116(G)(4). [*Smith v Globe Life Ins Co, supra* at 455-456, n 2 (emphasis in original).]

In dismissing plaintiff's "immunity" claim, the trial court properly observed that such a claim is an affirmative defense that belongs in a responsive pleading. MCR 2.111(F)(3)(a). Because there is no recognized claim of "immunity" apart from its status as a defense, that claim was properly dismissed under MCR 2.116(C)(8).

The trial court granted summary disposition of plaintiff's claims of negligence, gross negligence, and malpractice on the basis that defendants were immune from civil liability under MCL 722.625. In addition, the court found that the malpractice claim, in the case of defendants Sendi and New Oakland, was also subject to dismissal for failure to file an appropriate affidavit of merit. We discern no error with regard to the trial court's rulings.

MCL 722.623(1) states:

> A physician, . . . nurse, . . . psychologist, marriage and family therapist, licensed professional counselor, certified social worker, . . . who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. . . . A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

MCL 722.624 states:

> In addition to those persons required to report child abuse or neglect under section 3, any person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency.

At the time this action arose, MCL 722.625[1] stated, in pertinent part:

> A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death.

As this Court observed in *Awkerman v Tri-County Orthopedic Group, PC*, 143 Mich App 722, 726-727; 373 NW2d 204 (1985):

> The act clearly and unambiguously provides immunity to persons who file a child abuse report in good faith. Plaintiffs do not allege that the defendants acted in bad faith in filing the reports here in question. Rather, the reports were filed due to an allegedly negligent diagnosis of the cause of the minor plaintiff's frequent bone fractures. Such an allegation cannot, as a matter of law, successfully avoid the immunity proved by the child abuse reporting statute.

Also, in *Warner v Mitts*, 211 Mich App 557, 559; 536 NW2d 564 (1995), this Court stated:

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[1] This statute was amended by 1998 PA 428, but the quoted portion was not affected.

> [I]t is apparent a person who has "reasonable cause to suspect child abuse" is by definition "acting in good faith" when reporting the suspicions. Thus, immunity extends to reports of "suspected" child abuse regardless of the outcome of a subsequent investigation. The purpose of the immunity is to facilitate the public policy behind the act, which is to encourage reporting of suspected child abuse.

Here, one of the children reported to Gorney-Jankowski that he witnessed his brother performing oral sex on plaintiff. That statement provided reasonable cause to suspect child abuse. See generally *Williams v Coleman*, 194 Mich App 606, 617; 488 NW2d 464 (1992). Accordingly, Gorney-Jankowski "by definition" acted in good faith in reporting the alleged abuse. *Warner*, *supra* at 559. We find no merit to plaintiff's suggestion that defendants are not entitled to immunity because Gorney-Jankowski failed to investigate the allegation of sexual abuse before reporting it. The statute requires that, if sexual abuse is "suspected," it must be immediately reported. The duty to investigate reported cases of suspected child abuse properly belongs to the Family Independence Agency and law enforcement authorities. See generally *Williams*, *supra* at 617-618. As this Court stated in *Williams*, *supra* at 619-620, "[t]he actual decision concerning the validity of the information was not [for the reporting person] to make, especially in light of the information . . . they then possessed." The question of good faith did not depend on the outcome of any subsequent investigation into the allegations. *Warner, supra* at 559.

Moreover, we conclude, contrary to plaintiff's contention, that plaintiff failed to present evidence to rebut the presumption of and evidence of good faith. The affidavits that plaintiff submitted, while suggestive of possible negligence in diagnosis, simply did not demonstrate that defendants acted in bad faith by making the child abuse report, and plaintiff's promise to offer factual support for his position at trial was insufficient to defeat defendants' motions for summary disposition. *Smith v Globe Life Ins Co*, *supra* at 455, n 2. Contrary to plaintiff's assertion, the trial court did not impermissibly make findings of fact when it determined that defendants were entitled to immunity under MCL 722.625. Rather, the court properly determined that plaintiff failed to show a genuine issue of material fact with regard to the issue. We conclude that the trial court properly dismissed the negligence and malpractice counts under MCR 2.116(C)(7) because defendants were immune from tort liability under MCR 722.625.

Moreover, we conclude that the trial court properly dismissed the malpractice[2] claims with respect to defendants Sendi and New Oakland on the additional basis that plaintiff did not file an appropriate affidavit of merit. The trial court stated:

> Moreover, summary disposition is appropriate as to the malpractice claim for Plaintiffs' failure to file an appropriate affidavit of merit under MCL 600.2912d. Here, Plaintiff filed an affidavit of merit by Melvin J. Guyer, Ph.D, J.D. However, Dr. Guyer is not a medical doctor while Defendant Sendi is a

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[2] Plaintiff at one point states that he *did not* in fact make a malpractice claim against defendants because he was not their patient. However, he later states that "the two children who were the patients are suing here," and the complaint lists him in his own capacity *and* as next friend of his children. Moreover, he clearly set forth a claim labeled "malpractice" in his complaint.

> medical doctor certified by the American Board of Psychiatry and Neurology in the fields of both psychiatry and child psychiatry.

MCL 600.2912d(1) states, in part:

> Subject to subsection (2), the plaintiff in an action alleging medical malpractice, or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169.

MCL 600.2169(1)(a) states:

> In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:
>
> (a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.

Defendant Sendi is a medical doctor, certified in the fields of psychiatry and child psychiatry, and Gorney-Jankowski is a registered nurse and clinical nurse specialist. Plaintiff submitted an affidavit of merit from Melvin J. Guyer, who is not a medical doctor or a registered nurse. Thus, plaintiff's affidavit of merit did not satisfy the requirements of § 2169(1)(a). Accordingly, plaintiff's malpractice complaint was not viable with regard to *any* of the three defendants.[3] See *Scarsella v Pollak*, 461 Mich 547, 549-550; 607 NW2d 711 (2000). No error occurred.

Plaintiff contends that his negligence counts should remain because MCL 722.625 states that statutory immunity "does not extend to a negligent act that causes personal injury or death . . . ." However, as noted in *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 253; NW2d (1993), modified by *Patterson, supra* at 433-435, "[t]he gravaman of an action is determined by reading the claim as a whole." A plaintiff cannot evade a dismissal "by artful drafting." *Id*. We conclude that the gist of plaintiff's negligence counts with regard to alleged harm against the children is the same as the gist of his malpractice count, which, as noted above, was not viable because of the failure to submit proper affidavits of merit. Accordingly, the negligence counts

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[3] Although the trial court addressed the affidavit of merit issue only with regard to Sendi and New Oakland, we emphasize that the malpractice case was also not viable with regard to Gorney-Jankowski. As noted in *Messenger Ingham County Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998), this Court may affirm a trial court's decision on alternative grounds from those cited by the trial court.

with regard to the children were similarly not viable. We further conclude that the negligence counts with regard to the alleged harm against plaintiff himself essentially related to the reporting of suspected sexual abuse and thus were barred, as discussed above, by the immunity granted under MCL 722.625.

The trial court dismissed plaintiff's claim of intentional infliction of emotional distress because it found that plaintiff failed to submit evidence to establish a question of fact with regard to this claim. We agree with the trial court that plaintiff failed to present any evidence of extreme and outrageous conduct to create a genuine issue of material fact for trial. See *Graham v Ford*, 237 Mich App 670, 674675; 604 NW2d 713 (1999).

Finally, plaintiff contends that the "mediation sanctions were unfair." However, in addressing this issue plaintiff merely sets forth a laundry list of legal principles and fails to argue how these principles were violated in the instant case. A party may not merely announce a position and leave it up to this Court to unravel for him his arguments. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Accordingly, we decline to address this issue.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Patrick M. Meter